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District Counsel

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re

TULARE LOCAL HEALTHCARE  
DISTRICT, dba TULARE REGIONAL  
MEDICAL CENTER,

Debtor.

CASE NO. 17-13797

Chapter 9

Adv. No.: 18-01001

**ANSWER OF TULARE LOCAL  
HEALTHCARE DISTRICT, dba  
TULARE REGIONAL MEDICAL  
CENTER TO COMPLAINT FOR  
BREACH OF CONTRACT, ACCOUNT  
STATED, AND ATTORNEYS FEES**

GRAHAM PREWETT, INC.,

Plaintiff,

v.

TULARE LOCAL HEALTHCARE  
DISTRICT, dba TULARE REGIONAL  
MEDICAL CENTER; DOES 1 through 100,

Defendants.

1 Defendant, Tulare Local Healthcare District, dba Tulare Regional Medical Center  
2 ("Defendant") answers the Complaint as follows:

3 Pursuant to FRPB 7012 and Fed. R. Civ. P. 12(b), Defendant denies each and  
4 every allegation of the Complaint, and further denies that Plaintiff is entitled to any  
5 equitable or legal relief, or any damages whatsoever.

6 **AFFIRMATIVE DEFENSES**

7 As and for Affirmative Defenses, Defendant hereby asserts and alleges the  
8 following:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Cause of Action)**

11 1. Plaintiff's Complaint, and each and every cause of action therein, fail to  
12 state facts sufficient to constitute a cause of action against this answering Defendant.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Failure to Perform)**

15 2. As a separate and distinct affirmative defense to Plaintiff's Complaint, and  
16 each and every cause of action therein, this answering Defendant alleges that if any  
17 contract existed between this answering Defendant and Plaintiff, Plaintiff failed to  
18 discharge its obligation and perform all conditions under that contract, barring Plaintiff's  
19 recovery.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Failure of Condition Precedent)**

22 3. As a separate and distinct affirmative defense to Plaintiff's Complaint, and  
23 each and every cause of action therein, this answering Defendant alleges that if this  
24 answering Defendant failed to perform the obligation described in the Complaint, which  
25 this answering Defendant denies, that failure resulted from Plaintiff's failure to perform  
26 as required by the terms of the contract, and that performance on Plaintiff's part was a  
condition precedent to the performance of this answering Defendant's obligation.

**FOURTH AFFIRMATIVE DEFENSE****(Modification of Agreement)**

4. As a separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action therein, this answering Defendant alleges that any agreement which may have existed between Plaintiff and this answering Defendant was modified in whole or in part by subsequent agreement of the parties.

**FIFTH AFFIRMATIVE DEFENSE****(Breach of Contract)**

5. As a separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action therein, this answering Defendant alleges Plaintiff breached its obligations under the agreements and/or contracts, if any, entered into by and between the parties and further breached the covenant of good faith and fair dealing, and Plaintiff is thereby estopped and barred from asserting any alleged breach by this answering Defendant.

**SIXTH AFFIRMATIVE DEFENSE****(Bad Faith)**

6. As a separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action therein, Plaintiff's prayer for relief must be denied by reason of bad faith by Plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE****(Failure to Mitigate Damages)**

7. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred as Plaintiff has failed and neglected to undertake reasonable efforts to mitigate and resolve any damages, if any, which such damages this answering Defendant denies.

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**EIGHTH AFFIRMATIVE DEFENSE****(Offset)**

8. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred as a result of offset between monies owed from Plaintiff to this answering Defendant as a result of the various agreements entered into, if any, by and between the parties.

**NINTH AFFIRMATIVE DEFENSE****(Fault of Others)**

9. As a separate and distinct affirmative defense to Plaintiff's Complaint and each and every cause of action therein, this answering Defendant is informed and believes and thereon alleges that the injuries and damages complained of by Plaintiff, if any, were either wholly or in part, directly and proximately caused by the acts, omissions, and/or legal fault or default of persons or entities other than this answering Defendant.

**TENTH AFFIRMATIVE DEFENSE****(Laches)**

10. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred by the equitable doctrine of laches.

**ELEVENTH AFFIRMATIVE DEFENSE****(Waiver)**

11. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred by the equitable doctrine of waiver.

**TWELFTH AFFIRMATIVE DEFENSE****(Equitable Estoppel)**

12. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred by the equitable doctrine of estoppel.

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**THIRTEENTH AFFIRMATIVE DEFENSE****(Unclean Hands)**

13. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred in whole or in part by Plaintiff's unclean hands, because Plaintiff's conduct was fraudulent, illegal, and inequitable.

**FOURTEENTH AFFIRMATIVE DEFENSE****(Fraud)**

14. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred by the fraudulent conduct of Plaintiff, including but not limited to, Plaintiff's misrepresentations of fact, with knowledge of said misrepresentations or reckless disregard for the same with the intent to defraud this answering Defendant and/or induce this answering Defendant to enter into said agreement and said misrepresentations were reasonably relied on by this answering Defendant to its detriment. Based upon said conduct, Plaintiffs are estopped to seek the relief demanded in the Complaint or any relief whatsoever against this answering Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE****(Statute of Limitations)**

15. As a separate and distinct affirmative defense, Plaintiff's Complaint is barred by the appropriate statute of limitations.

**SIXTEENTH AFFIRMATIVE DEFENSE****(Consent)**

16. As a separate and distinct affirmative defense, Plaintiff's Complaint, and each and every cause of action therein, is barred as Plaintiff consented to any alleged damages and therefore has waived its right to sue this answering Defendant.

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**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Consideration)**

17. As a separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action therein, this answering Defendant alleges the contract was executed without any consideration whatsoever in that Defendant received no value, in any amount or of any kind, from Plaintiff in relation to said contract.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Unconscionability)**

18. As a separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action therein, this answering Defendant alleges the contract is unenforceable, because it was unconscionable at the time the contract was made, in that Plaintiff used oppressive tactics against Defendant and took advantage of Defendant's naiveté and trust.

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**NINETEENTH AFFIRMATIVE DEFENSE****(Reservation of Right to Assert Additional Affirmative Defenses)**

19. This answering Defendant does not presently have sufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses. This answering Defendant, therefore, reserves the right to assert additional affirmative defenses in the event discovery indicates the same would be appropriate.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by its complaint herein;
2. For costs of suit; and
3. For such other and further relief as the court deems proper.

Dated: February 6, 2018

WALTER WILHELM LAW GROUP,  
a Professional Corporation



Danielle J. Bethel, Attorneys for Debtor  
Tulare Local Healthcare District, dba  
Tulare Regional Medical Center